IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6065 OF 1999

Smt. Gajara Vishnu Gosavi,)
83, Durgapeth, Satara.) ... Petitioner

Versus

1. District & Sessions Judge, Satara.)
2. The High Court, Bombay, through the) Registrar, High Court, Appellate Side,) Bombay.)
3. Shri K.D. Kulkarni, Acting as) Superintendent, District Court, Satara.)
4. Shri B.K. Panaskar, Acting as) Superintendent, Civil Court, Senior) Division, Satara.)
5. Shri D.D. Nadgoundi, Acting as) Assistant Superintendent, District) Court, Satara.)
6. Shri I.R. Mulla, Acting as Assistant) Superintendent, Civil Court, Vaduj.)
7. Shri C.S. Khadsara Acting as Assistant) Superintendent, Civil Court, Wai.)
8. Shri V.W. Shrishikar Acting as) Assistant Superintendent, Civil Court,) Phaltan.
9. Shri S.L. Kamble Acting as Assistant) Superintendent, Civil Court, Satara.)
10. Shri H.T. Bendre, Acting as Assistant) Superintendent, District Court, Satara.)
11. Shri C.A. Mantrawadi Acting as) Assistant Superintendent, Chief) Judicial Magistrate, Satara.)
12. Shri S.R. Kshirsagar Acting as) Assistant Superintendent, Civil Court,) Dahiwadi.

13. Shri S.S. Mahamuni Acting as) Assistant Superintendent, Civil Court,) Karad.
14. Shri V.P. Honkhande Acting as) Assistant Superintendent, Civil Court,) Khandala.)
15. Shri M.A. Pathan, Acting as Assistant) Superintendent, Civil Court, Koregaon.) ... Respondents.

CORAM : SMT. RANJANA DESAI & SMT. V.K. TAHILRAMANI, JJ.

DATED : 5TH & 7TH SEPTEMBER, 2006.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. The petitioner is at present working as a Superintendent in the School Tribunal, Satara. In this petition filed under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside of order dated 18/12/1997 passed by respondent 1 - the District and Sessions Judge, Satara and order dated 22/12/1998 passed by respondent 2, which was communicated to the petitioner vide letter dated 30/12/1998 issued by respondent 1 - the District and Sessions Judge, Satara. The petitioner has also sought for an order directing respondents 1 and 2 to compute the seniority of the petitioner vis-a-vis respondents 3 to 15 in the light of letter dated 9/12/1984, letter dated 19/1/1985, letter dated 29/5/1985, letter dated 14/10/1985 and letter dated 27/12/1985 issued by respondent 2. The petitioner has sought for a declaration that the petitioner is senior to

respondents 3 and 4 in the cadre of Senior Clerk as well as Assistant Superintendent, Satara Division.

2. The facts which give rise to the present petition may have to be shortly stated. On 16/6/1972, the petitioner was appointed as Junior Clerk in the District Court, Satara. The petitioner was confirmed as Junior Clerk with effect from 1/8/1981. The petitioner passed the lower standard departmental examination in the year 1980 and was appointed to the post of Senior Clerk with effect from 18/3/1986. As we have stated hereinabove, the petitioner is now working as Superintendent in the School Tribunal, Satara.

3. The basic grievance of the petitioner is in respect of promotion and seniority granted to respondents 3 and 4 over the petitioner even though the petitioner was senior to them and was eligible for promotion to the post of Senior Clerk prior to promotion of respondents 3 and 4. The case of the petitioner is that she was appointed as Junior Clerk on 16/6/1972 prior to respondent 4, who was appointed on 10/6/1974 as Junior Clerk. Respondent 4 was appointed as Junior Clerk on 12/2/1968 at Ratnagiri and was transferred to Satara on 4/2/1980. Therefore, the seniority of respondent 4 in Satara Division will have to be counted with effect from 4/2/1980. According to the petitioner, she was therefore undoubtedly senior to respondents 3 and 4 in the post of Junior Clerk.

4. It is the contention of the petitioner that for promotion to the post of

Senior Clerk, a Junior Clerk has to pass lower standard departmental examination. The petitioner has passed the lower standard departmental examination in the year 1980. Respondent 4 has passed the said examination in the year 1979 while respondent 3 has passed the said examination prior to his transfer to Satara District. Thus the petitioner as well as respondents 3 and 4 were eligible for promotion to the post of Senior Clerk on the basis of seniority-cum-merit as they had all passed the lower standard departmental examination. As per the service record, the petitioner was senior to respondents 3 and 4 in the cadre of Junior Clerk.

5. In support of her submission, the petitioner has referred to letter dated 19/12/1984 sent by the Additional Registrar, High Court, Appellate Side, Bombay, to all District Courts stating that the study group recommendation has been accepted by the High Court. We may quote the relevant paragraph of the said letter as the petitioner's grievance rests on that letter.

> “Passing of lower standard departmental examination should amongst other things be considered as adequate qualification for eligibility for promotion to the post of Senior Clerk. Passing of higher standard departmental examination should be prescribed as one of the qualification for promotion to the post of Sheristedar, Assistant Superintendent and Higher Post. This would provide adequate

incentives to Ministerial Staff for passing Departmental Examination."

6. According to the petitioner, in view of the above circular, the minimum eligibility criteria for the promotion to the post of Senior Clerk was passing of lower standard departmental examination or confirmation to the post of Junior Clerk. According to the petitioner, the petitioner and respondents 3 and 4 had passed lower standard departmental examination and the petitioner was senior to respondents 3 and 4 in the cadre of Junior Clerk. However, at the relevant time i.e. in the year 1985, the petitioner had not passed the higher standard departmental examination whereas respondents 3 and 4 had passed the said examination.

7. The grievance of the petitioner is that despite the circular dated 19/12/1984, respondent 1 promoted respondent 4 to the post of Senior Clerk with effect from 24/1/1985 and, thereafter, promoted respondent 3 to the post of Senior Clerk with effect from 8/2/1985 by'passing the legitimate claim of the petitioner to the post of Senior Clerk. Vide letter dated 28/5/1985 issued by the Additional Registrar (Inspection), High Court, Bombay, further clarification was issued in respect of circular dated 19/12/1984. The said letter stated that in some cases the Junior Clerks who were promoted to the post of Senior Clerk on the basis of passing of lower standard departmental examination were asked to give undertaking at the time of promotion that they would pass the higher standard departmental examination by end of 1985 failing which

they would be reverted. The said letter further stated that several representations were made in respect of the undertakings and upon consideration of the said representations, the High Court had directed that the undertaking referred to in the circular dated 19/12/1984 was only in respect of persons who were promoted to the post of Assistant Superintendent, Sheristedar and other higher posts and that the High Court never intended to prescribe higher standard departmental examination for the persons who were holding the post of Senior Clerk. According to the petitioner, this circular clarified that the prescribed qualification for promotion to the post of Senior Clerk was passing of lower standard departmental examination and not the passing of the higher standard departmental examination.

8. The petitioner has then made a reference to circular dated 14/10/1985 issued by the Additional Registrar, High Court, Bombay. By this circular, it was made clear that even though a Junior Clerk who has passed the higher standard departmental examination is available, he should not be preferred to the Junior Clerk, who is senior in service and who has passed the lower standard departmental examination, while granting promotion to the post of Senior Clerk.

9. The petitioner has then referred to circular dated 27/12/1985 issued by the Additional Registrar, High Court, Appellate Side, Bombay clarifying that the norms for promotion of a Junior Clerk to the post of Senior Clerk should be scrupulously followed as per the direction contained in various letters

issued by the High Court even though the same may result in reversion of some of the Senior Clerks, who have been promoted earlier, while implementing the new staffing pattern and whose promotions are in disregard to the norm mentioned in the circulars dated 19/12/1984 and 14/10/1985. According to the petitioner, in view of the above circulars, respondent 1 should have reverted respondents 3 and 4 and ought to have promoted the petitioner in their place. The petitioner is aggrieved by the fact that ignoring the above circulars, respondent 2 has given preference to respondents 3 and 4 over the petitioner and the petitioner is thereafter promoted to the post of Senior Clerk with effect from 18/3/1986.

10. According to the petitioner, the gradation list of Senior Clerks was published on 20/1/1988. In the gradation list, the petitioner was shown at Serial No.27. Respondent 3 was shown at Serial No.9 and Respondent 4 was shown at Serial No.7, though the petitioner was senior to both respondents 3 and 4. Being aggrieved by the said gradation list, the petitioner preferred a representation before respondent 1, dated 15/2/1988. By letter dated 26/10/1988 issued by the Registrar, District Court, Satara, the petitioner was intimated that the gradation in respect of respondents 3 and 4 was correct and they are senior to the petitioner. It was stated that the petitioner had passed higher standard departmental examination in the year 1986 and respondents 3 and 4 had passed the said examination prior to the petitioner and, at the relevant time, passing of the higher standard departmental examination was pre-requisite for promotion to the post of Senior Clerk. It

was further stated in the said letter that since respondents 3 and 4 were qualified and have passed the higher standard departmental examination, they were promoted as per the direction of the High Court. According to the petitioner, this stand of respondent 2 is clearly contrary to the circulars of the High Court on which the petitioner has placed reliance inasmuch as passing of the higher standard departmental examination could never be described as an eligibility criteria for promotion to the post of Senior Clerk.

11. According to the petitioner, thereafter, he submitted a series of representations, the details of which have been noted in the petition. The petitioner did not receive any response to the said representations. According to the petitioner, vide order dated 18/12/1997, respondent 1 rejected all the representations of the petitioner. It was stated in the said letter that since the petitioner had not passed the higher standard departmental examination at the time of posting of respondents 3 and 4 as Senior Clerks, there was no question of reverting respondents 3 and 4 as per the High Court's communication dated 14/10/1985. The petitioner filed an administrative appeal against the order dated 18/12/1997 passed by respondent 1. The petitioner, thereafter, received letter dated 30/12/1998 from respondent 1 stating that vide letter dated 22/12/1998 issued by the Registrar, High Court, Bombay, it was intimated that the representation of the petitioner was rejected. Being aggrieved by the order dated 18/12/1997 passed by respondent 1 and the letter dated 22/12/1998 issued by respondent 2 and communicated to the petitioner by respondent 1 by communication dated

30/12/1998, the petitioner has approached this court.

12. We have heard, at considerable length, Mr. Chavan, the learned counsel appearing for the petitioner. Mr. Chavan took us to various circulars issued by the High Court on which heavy reliance has been placed by the petitioner and copies of which have been annexed to the petition. Mr. Chavan contended that there can be no dispute about the fact that the petitioner was senior to respondents 3 and 4 in the post of Junior Clerk. He submitted that it also cannot be disputed that passing of lower standard departmental examination was the qualification for eligibility for promotion to the post of Senior Clerk. He submitted that it is also clear, beyond doubt, from the various circulars of the High Court that the Junior Clerks, who had passed the lower standard departmental examination and thus qualified themselves for the post of Senior Clerk, should be promoted to the post of Senior Clerk even though the Junior Clerks, who have passed the higher standard departmental examination but who are junior in service are available. He submitted that the circular dated 14/8/1985 clearly states this. Mr. Chavan submitted that the petitioner as well as respondents 3 and 4 had passed the lower standard departmental examination and considering the fact that the petitioner was clearly senior to respondents 3 and 4 in the post of Junior Clerk, the petitioner should have been given preference over respondents 3 and 4 and the petitioner ought to have been promoted to the post of Senior Clerk. The learned counsel urged that the reason given by respondent 1 while rejecting the representation of the petitioner that respondents 3 and 4 had passed the

higher standard departmental examination and that the petitioner had not passed the said examination at the time of promotion of respondents 3 and 4 and, hence, the petitioner was not promoted, is clearly contrary to the circulars of the High Court. Mr. Chavan submitted that it is, therefore, necessary for this court to set aside the order passed by respondent 1 as well as the order passed by respondent 2 dated 22/12/1998 as it is contrary to the circulars issued by the High Court. The learned counsel also urged that the petitioner has approached the court the moment the gradation list was published. He submitted that the gradation list was published on 20/1/1988 in which respondents 3 and 4 are shown senior to the petitioner and it is upon coming to know of the said gradation list that the petitioner preferred various representations and, therefore, it cannot be said that the petitioner has approached the authorities late or that the petitioner is not entitled to any relief because the petition suffers from laches.

13. Mr. Chavan also contended that the orders which were communicated to the petitioner do not indicate that it is because of the alleged delay in approaching the authorities that the petitioner was denied the relief. Mr. Chavan relied upon the judgment of this court in ***Shashikumar Nagnathrao Dixit v. State of Maharashtra & Ors. 2005 (Supp.) Bom.C.R. 687*** where according to him in similar fact situation the grievance of the petitioner therein was accepted and he was granted deemed date of promotion. Mr. Chavan contended that the ratio of the said judgment is clearly applicable to the facts

of the present case. He submitted that therefore this is a fit case where this court should grant relief to the petitioner.

14. We have also heard Mr. Kumbhakoni, the learned Associate Advocate General appearing for the State. Mr. Kumbhakoni contended that the petitioner has not been diligent in approaching this court and, therefore, he is not entitled to any reliefs. He submitted that the order dated 26/10/1988 has attained finality. The petitioner has not challenged it till date. He submitted that on 21/1/1985, respondent 4 was promoted in preference to the petitioner and on 8/2/1985, respondent 3 was promoted in preference to the petitioner. But the petitioner did not take any steps to assert her right of seniority over them. It is only after gradation list was published in 1988 that the petitioner sent her first representation. It is only in the year 1998 that the petitioner made a representation to the High Court. Mr. Kumbhakoni submitted that in the circumstances of the case therefore this court should not interfere with the impugned order as any interference at this stage will adversely affect six persons in the cadre of Assistants and 13 persons in the cadre of Senior Clerk. In support of his submission Mr. Kumbhakoni relied on the judgment of the Supreme Court in ***Mohd. Siddiq Ali v. High Court of A.P. Through Registrar & Others, (2005) 13 SCC 207***.

15. We have given our anxious consideration to the submissions advanced by both sides. Admittedly, the petitioner was senior to respondents 3 and 4 in

the cadre of Junior Clerk. It is also an admitted position that the petitioner and respondents 3 and 4 had passed the lower standard departmental examination. There also cannot be any dispute about the fact that the High Court has accepted the study group recommendation that passing of lower standard departmental examination should be considered as adequate qualification for promotion to the post of Senior Clerk and passing of higher standard departmental examination should be considered as one of the qualification for promotion to the posts of Sheristedar and Assistant Superintendent. The circulars of the High Court on which reliance is placed by the petitioner also show that the Junior Clerks, who have passed the higher standard departmental examination have to be promoted to the post of Senior Clerks, even though the Junior Clerks, who have passed the higher standard departmental examination but junior in service are available. The circulars further reveal that these norms have to be scrupulously followed even if they may result in reversion of some of the Senior Clerks who have been promoted earlier while implementing the new staffing pattern and whose promotions are in disregard to the norms mentioned in High Court circulars dated 19/12/1984 and 14/10/1985.

16. We must record that in the face of these circulars, respondents 3 and 4 could not have been promoted though the petitioner was eligible and available for promotion to the post of Senior Clerk. The circulars required the High Court to implement the recommendation of the study group even if it meant reverting those who had been wrongly promoted. It appears that what

weighed with respondent 2 was the fact that at the relevant time i.e. in the year 1985, the petitioner had not passed the higher standard departmental examination whereas respondents 3 and 4 had passed the said examination. This is reflected in the letter dated 26/10/1988 sent by the Registrar, District Court, Satara to the petitioner. This approach, according to us, is clearly erroneous and it is totally contrary to the High Court circulars.

17. Ordinarily, we would have interfered with the impugned orders but in the facts of this case, as pointed out to us by Mr. Kumbhakoni, any interference by us, at this stage, would adversely affect six persons in the cadre of Assistant and 13 persons in the cadre of Senior Clerk. We find substance in the submission of Mr. Kumbhakoni that the petitioner has not been diligent in approaching the authorities and the court. It is pertinent to note that on 21/1/1985, respondent 4 was promoted in preference to the petitioner which gave first cause of action to the petitioner. On 8/2/1985, respondent 3 was promoted in preference to the petitioner which gave second cause of action to the petitioner. However, the petitioner did not take any steps to assert her right of seniority at that stage. On 18/3/1986, the petitioner was promoted. On 20/1/1988, a gradation list of Senior Clerk was prepared. In that list, respondents 3 and 4 were shown at higher positions. It is for the first time on 15/2/1988 that the petitioner made a grievance, that too, only about the gradation list. On 26/10/1988, the District Judge, Satara, rejected the application of the petitioner. This order has not been challenged till date and this order has assumed finality. Even in the representation of the

petitioner, the petitioner has not made any grievance about this. It is pertinent to note that in her letter dated 12/12/1991, the petitioner has accepted that she has received the reply in respect of her representation dated 26/10/1988. It is after six years i.e. on 17/10/1997 that the petitioner made fresh representation to respondent 1 making a grievance with respect to seniority in the cadre of Senior Clerk, which came to be rejected on 18/12/1997. The petitioner approached the High Court by way of an appeal on 19/4/1998. These events make it clear that the petitioner has not been prompt in asserting her rights. In this connection, reliance placed by Mr. Kumbhakoni on the judgment of the Supreme Court in ***Mohd. Siddiq Ali' case (supra)*** is apt. In that case, the High Court of Andhara Pradesh issued a notification on 23/10/1996 for making appointments to the post of District Munsiff. After the written examination was held, candidates were called for interview and the result was declared on 18/3/1997. On the basis of the merit list, some appointments were initially made on 7/4/1998. The appellant filed writ petition challenging the selection and appointment of some women candidates and candidates belonging to the Scheduled Castes and Scheduled Tribes. The writ petition was dismissed in limine by the High Court on 18/1/1999 saying that backlog was permissible under the Constitution. It was observed by the High Court that insofar as the women reservation is concerned, on 31/8/1998, the High Court had maintained it on the ground that the same was not challenged, It was observed that taking a clue from that judgment that reservation for women was not challenged, the writ petition had been filed, but it was hit by laches because the notification was issued in 1996, selection

process had been gone through and selections had been finalised and appointments had been made. The appellant therein challenged this judgment in the Supreme Court. The Supreme Court confirmed the High Court's order by holding that the persons selected had already joined as District Munsiffs long back and the challenge has been raised to their selection after the decision had been rendered by the Andhra Pradesh High Court on 31/8/1998. It is apparent therefore that the Supreme Court confirmed the High Court judgment rejecting the writ petition filed by the appellant therein on the ground that there was about two years delay in challenging the reservation in favour of women candidates and because the persons who were selected had already joined as District Munsiffs. In our opinion, the ratio of this judgment is clearly attracted to this case. Since there is considerable delay in approaching the court, we do not feel this to be a fit case where we should interfere.

18. It is true as contended by Mr. Chavan that the letters of the respondents communicated to the petitioner rejecting her grievance do not indicate that her grievance is rejected because of laches. But, in our opinion, that will make little difference. The fact is that, there are laches and any interference by us will have a cascading effect at this stage and will affect various persons who are already promoted. In the circumstances of the case, while disposing of this writ petition, we can only record the statement of the learned Associate Advocate General that if an occasion arises to promote anybody lower in the seniority list, then after accepting the grievance of the

petitioner, she will be given preference and promoted. In our opinion, the petitioner cannot draw any support from the judgment of this court in ***Shashikumar' case (supra)*** because in that case the petitioner had already retired and therefore giving her deemed date of promotion would have had no effect on those who were in service and who had been promoted. The petition is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[SMT. V.K. TAHILRAMANI, J.]